

(This House Believes) The Role of the Mediator Can Be Overrated

Kluwer Mediation Blog

January 24, 2018

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Please refer to this post as: Greg Bond, '(This House Believes) The Role of the Mediator Can Be Overrated', Kluwer Mediation Blog, January 24 2018, <http://mediationblog.kluwerarbitration.com/2018/01/24/house-believes-role-mediator-can-overrated/>

During Lex Infinitum, the international commercial mediation competition for students at V.M. Salgaocar College of Law in Goa, India, there was a lively and entertaining debate, in the best debating-society tradition. The motion was: "The Role of the Mediator Is Overrated." Arguing this in front of a hundred and fifty students, mediators, lawyers and academics in a forum designed to promote mediation seemed to be a daunting task. But it is certainly true that the role of the mediator can be overrated, and I will come to that later.

First the debate. Mediators may help parties make breakthrough agreements, one of the arguments against the motion went, and the speaker presented a case helping a divorcing couple to reconcile. Mediators are needed more than ever in a world in which political and international conflict remains a massive problem and threat. The more mediators there are the more small steps there can be towards peace. And as long as our world is not perfect, which it is not, we will need mediators. Mediators can change people's lives. All true.

But the role of the mediator is overrated, the pro argument went, because people are generally well able to resolve their differences, and while mediators may be helpful on process, they do no more than that. Mediators are assistants to negotiators and counsels, let us not overestimate what they can do. If the parties need to come to agreement because their alternatives are less attractive than agreement, they probably will, and a mediator may be able to assist, but little more. If the parties have good reason not to agree, there is not much a mediator can do. There is so much talk of mediation, there is so much mediation training,

and there are so many trained and qualified mediators. But how much mediation do they actually do? We actually need to be telling trainees that they will not mediate. The role of the mediator is overrated.

It was certainly an entertaining debate, at times raucous.¹⁾ I confess to debating pro the motion at Lex, and comparing mediation to sex. Mediation is made to seem sexy, mediators attractive. There is a lot of talk about mediation, just as there is a lot of talk about sex (in the media or in our heads), but nowhere near as much of either goes on as is talked or dreamed about. Mediators and would-be mediators desire mediation, but don't always get it. And when it does happen, it frequently does not match the images we make of it. Like sex? There was and is a serious message at its heart. A message which all mediators, young and old, experienced or new, should embrace. It is not really about whether the role of the mediator is overrated, it must be about how mediators rate themselves.

Over recent weeks I have heard from a former student of mine, who turned down a request to take part in a public mediation event. I have spoken to a trainer who says that she would do negotiation training but not mediation training, and to lawyer-mediators who have said they would not work in certain fields. Each of these people felt insufficiently qualified to take mediation-related work on in the setting offered. However flattering – or needed – the offer of work was, they knew that it was not for them. This is right. On the other hand, I received an e-mail from someone I have never met saying she was “sure she would be able to help me” in a matter for which I had requested an offer for some counseling. I never got back to her. How could she be sure at this stage in our correspondence? Reflecting on your limits should be a key element in every mediation training programme, and a key part of every mediator's practice. Mediators, who, particularly in settings like Lex Infinitum where there are so many enthusiastic young people, are in danger of being seen to have some special magic or aura as conflict resolvers and communicators, and whose egos are potentially flattered by this, must know their own limits. They must not overrate themselves.

When explaining mediation services to clients, who may sometimes be desperate for solutions and may even occasionally see a mediator as a great last hope, it is important to realistically discuss expectations and what the mediator can and cannot, and will and will not, do or attempt to do. In the name of reality, in this kind of conversation mediators probably need to underrate what they can achieve.

Not out of false modesty, but to be sure that the clients and purchasers of mediation are getting a fair bargain.

So the role of the mediator is not per se overrated, but it can be. Overrate it and you do the profession a disservice.

References

1.	↑	I confess to debating pro the motion at Lex, and comparing mediation to sex. Mediation is made to seem sexy, mediators attractive. There is a lot of talk about mediation, just as there is a lot of talk about sex (in the media or in our heads), but nowhere near as much of either goes on as is talked or dreamed about. Mediators and would-be mediators desire mediation, but don't always get it. And when it does happen, it frequently does not match the images we make of it. Like sex?
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